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Atty. Dkt. No.: P66378US0

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Franz Josef MEYER-ALMES

Serial No.: 09/762,304

Group Art Unit: 1642

Filed: April 16, 2001

Examiner: RAWLINGS, Stephen L.:

For: CHEMOSENSITIVITY MEASUREMENT USING CASPASE ACTIVITY

RESPONSE

Commissioner of Patents
Washington, D.C. 20231

Sir:

Applicant submits the instant paper in response to the Office Action mailed July 2, 2002.

Pursuant to the restriction requirement, Applicant elects the invention of Group I, claims 1-8, with traverse. Traversal is maintained because the kit, Group II invention is designed for performing the method, Group I invention; and, because the claims in Group I and Group II share a special technical feature in common, i.e., the kit is designed to perform the method.

Pursuant to the requirement of election of species, Applicant elects the following species:

Within the group of species (a) to (c), species (a) directed to the special technical feature of determining the chemosensitivity of leukemia and reference cells is elected.

Within the group of species (d) to (h), species (d) directed to the special technical feature

of determining the chemosensitivity of cells to a chemotherapeutic or pharmaceutical agent or agents is elected.

Within the group of species (i) to (m), species (i) directed to the special technical feature of measuring caspase substrate turnover is elected.

Within the group of species (n) to (q), species (n) directed to the special technical feature of measuring a dye portion is elected.

Claims 1-7 read on elected species (a), and claims 1-8 read on each of elected species (d), (i), and (n).

Election of species is made with traverse. Traverse is maintained, first, because the requirement is ambiguous and confusing. What is meant by “a single species,” which must be elected, is unclear. Accordingly, the instant election is made to the extent that the requirement can be understood.

Secondly, traversal is maintained in that the supposed special technical features identified at pages 4 and 5 of the Office Action appear to be embodiments of the invention to which the label “special technical feature” has been arbitrary attached. The determination of the special technical feature in accordance with PCT Rule 13.2 is not accomplished in the manner set forth in the Office Action.

In point of fact, elected claims 1-8 do share a special technical feature in accordance with PCT Rule 13.2, i.e., determining cell chemosensitivity by the method of the instant invention.

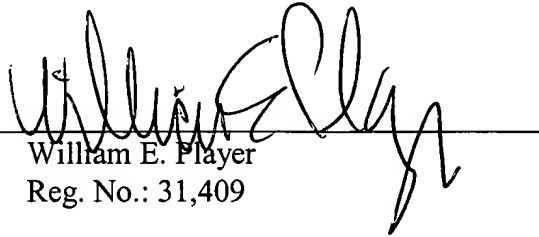
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Favorable action is requested.

Respectfully submitted,

JACOBSON HOLMAN PLLC

By: _____


William E. Player
Reg. No.: 31,409

The Jenifer Building
400 Seventh Street, N.W.
Suite 600
Washington, D.C. 20004
(202) 638-6666
Atty Dkt. No.: P66378US0
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